

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9053 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

RELIA DHANJIBHAI KHIMJIBHAI KOLI

Versus

RAJKUMAR

Appearance:

MR MIG MANSURI for Petitioner

MS PUNANI APP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 14/06/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The present petition arises of an order of detention dated 6th August 1998, made by the District Magistrate, Bhavnagar, under the powers conferred upon him under sub-section (2) of section 3 of the Gujarat

Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act'). The order of detention is accompanied by the grounds of detention and the petitioner-detenu is also furnished the copies of the supporting material.

It appears that the petitioner has been detained on account of his nefarious activities, which has resulted into lodging of three criminal cases against him. In each of the three criminal cases, the petitioner has been released on bail. The above referred criminal cases were lodged against the petitioner on 13th May, 1998 and 16th May, 1998. It is alleged that the petitioner is a head-strong person, and commits offences against the person and property of the people of the locality, and also keeps deadly weapons like knife, gun, sword etc. Apart from the investigation papers in the above referred three criminal cases. the Detaining Authority has also relied upon the statements of four witnesses who have refused to lodge formal complaint against the petitioner. All the said four witnesses have stated before the concerned authority that the petitioner had tried to extort money from those witnesses and on refusal, the petitioner and his associates had beaten the said witnesses. It is also alleged that the petitioner indulges in various nefarious activities. The petitioner is, therefore, considered to be a 'dangerous person' as defined in section 2 (C) of the Act. It is also alleged that the nefarious activities of the petitioner and his associates result into disturbance to the public tranquility and are prejudicial to the maintenance of public order.

As usual, the impugned order of detention has been challenged on several grounds. In support of his contentions, Mr. Mansuri has also relied upon several judgments of this court as well as of the Hon'ble Supreme Court.

I have perused the grounds of detention and the supporting material. It appears that the above referred witnesses had, on 28th and 29th May, 1998, made statements before the Police Inspector on his giving an assurance that their names and the addresses would not be disclosed anywhere which may jeopardise their safety. The said statements were verified by the District Magistrate, the Detaining Authority, on 31st May, 1998. In the grounds of detention and the affidavit made in reply to the present petition, it has been stated that the Detaining Authority was of the view that the statements made by the witnesses and the apprehension

voiced by them were genuine. However, on perusal of the records, I am unable to accept the assertion made by the Detaining Authority. There is no material whatsoever to support the assertion whether the allegations made by the concerned witnesses were genuine or not. It appears that the Police and the Detaining Authority both have relied upon the statements of the witnesses without verifying the correctness of the same.

In my view, therefore, the order of detention has been made by the Detaining Authority without application of mind and without verifying the genuineness of the statements of the witnesses. This has resulted into serious prejudice to the detenu. The order of detention, therefore, can not be permitted to operate further.

The petition is, therefore, allowed. The impugned order dated 6th August, 1998 (Annexure-A to the petition) is hereby quashed and set aside. The petitioner, unless required in some other case, be released forthwith. Rule is made absolute.

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JOSHI